

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

VANDA PHARMACEUTICALS INC.,

Plaintiff/Counterclaim Defendant,

v.

**CIVIL ACTION NO.: 3:15-CV-59
(GROH)**

INVENTIA HEALTHCARE PVT. LTD,

Defendant/Counterclaim Plaintiff.

SCHEDULING ORDER

Pursuant to Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 16(b) & 26(f), and the Local Rules of Civil Procedure ("LR Civ P"), it is hereby **ORDERED** that the below listed dates be adopted subject to the definitions following hereinafter:

- | | |
|---|--|
| 1. <u>Intermediate Pretrial Conference:</u> <u>Upon Request</u> | 6. <u>Vanda to Serve Invalidity Contention Interrogatories:</u> <u>August 26, 2015</u> |
| 2. <u>Motion for Proposed Joint Protective Order:</u> <u>July 22, 2015</u> | a. Answers (with claim charts): <u>September 25, 2015</u> |
| 3. <u>Inventia to Produce ANDA in Native Electronic Format:</u> <u>July 29, 2015</u> | 7. <u>Claim Term Exchange:</u> <u>October 23, 2015</u> |
| 4. <u>Rule 26(a)(1) Disclosures:</u> <u>August 13, 2015</u> | 8. <u>Exchange of Proposed Claim Constructions and Evidence*:</u> <u>November 13, 2015</u> |
| 5. <u>Inventia to Serve Infringement Contention Interrogatories:</u> <u>July 29, 2015</u> | 9. <u>Meet and Confer on Proposed Claim Constructions*:</u> <u>November 20, 2015</u> |
| a. Answers (with claim charts): <u>August 26, 2015</u> | 10. <u>Joint Claim Construction Chart*:</u> <u>December 4, 2015</u> |

* If necessary.

11. Opening Claim Construction Briefs*: **December 22, 2015**

a. Answers*: **January 20, 2016**

12. Joint Appendix: **January 20, 2016**

13. Markman Hearing*:
Court's Convenience

14. Mediation on or Before:
October 7, 2016

15. Joinder & Amendments:
May 13, 2016

16. Expert Disclosures:

a. With Burden: **May 27, 2016**

b. Without Burden: **June 24, 2016**

17. Examination/Inspection Deadline:
May 20, 2016

18. Discovery Completion:
July 22, 2016

19. Motion Practice /Dispositive Motions: **August 19, 2016**

20. Rule 26(a)(3) Disclosures:
September 16, 2016

a. Objections: **September 30, 2016**

21. Motions in Limine:
September 16, 2016

a. Responses:
September 30, 2016

22. Proposed Findings of Fact/Conclusions of Law:
October 14, 2016

23. Joint Pretrial Order:
October 21, 2016

24. Final Pretrial Conference:
October 28, 2016 at 9:30 am

25. Trial: **November 8, 2016 at 9:00 am, Martinsburg Federal Courthouse, 2nd floor**

1. Intermediate Pretrial Conference: **Upon Request**.

2. Motion for Proposed Joint Protective Order: **July 22, 2015**.

3. Inventia to Produce ANDA in Native Electronic Format: **July 29, 2015**.

4. Rule 26(a)(1) Disclosures: **August 13, 2015**.

5. Inventia to Serve Infringement Contention Interrogatories: **July 29, 2015**.

a. Answers (with claim charts): **August 26, 2015**.

6. Vanda to Serve Invalidity Contention Interrogatories: **August 26, 2015**.

a. Answers (with claim charts): **September 25, 2015**.

7. Claim Term Exchange: October 23, 2015.

8. Exchange of Proposed Claim Constructions and Evidence*: November 13, 2015.

9. Meet and Confer on Proposed Claim Constructions*: November 20, 2015.

10. Joint Claim Construction Chart*: December 4, 2015.

11. Opening Claim Construction Briefs*: December 22, 2015.

a. Answers*: January 20, 2016.

12. Joint Appendix: January 20, 2016.

13. Markman Hearing*: Court's Convenience.

14. Mediation: The parties shall have mediated this matter in good faith on or before October 7, 2016.

15. Joinder and Amendments: On or before May 13, 2016.

16. Expert Disclosures: The party bearing the burden of proof on an issue (normally the plaintiff) shall make the disclosures required by Fed. R. Civ. P. 26(a)(2)(A), (B) and (C) for that issue to all other parties or their counsel no later than May 27, 2016.

The party not bearing the burden of proof on an issue (normally the defendant) shall make the disclosures required by Fed. R. Civ. P. 26(a)(2)(A), (B) and (C) for that issue to all other parties or their counsel no later than June 24, 2016.

This order **does not** include rebuttal and/or surrebuttal experts, the use of which will only be granted for good cause shown by motion no later than 30 days before the pre-trial conference.

The disclosures described in Fed. R. Civ. P. 26(a)(2)(B) shall not be required of

physicians and other medical providers who examined or treated a party or party's decedent unless the examination was for the sole purpose of providing expert testimony in the case. However, their testimony shall be limited to the medical records unless designated as an expert witness for the purpose of giving opinion testimony (i.e. permanent disability, future medical treatment, etc.).

17. Examinations/Inspections: May 20, 2016.

18. Discovery Completion: All discovery shall be fully served and completed by **July 22, 2016**. "Complete discovery" as used in Fed. R. Civ. P. 16(b) means that all discovery requests are to be filed far enough in advance to be completed as required by the rules before the discovery deadline. Objections, motions to compel and all other motions relating to discovery in this civil action should be filed as soon as the problem arises, but are to be filed no later than one week after the discovery completion date. The Court will not consider any discovery related motions untimely filed after the above deadline.

The term "all discovery" in the preceding definition of "complete discovery" includes the disclosures required by Fed. R. Civ. P. 26(a)(1) and (2), but does not include the disclosures required by Fed. R. Civ. P. 26(a)(3).

Motions to compel are generally referred to the Magistrate Judge. However, the Court, if available, is open to conducting telephone hearings if serious disagreements threaten to terminate the conduct of depositions or examinations. If a motion to compel is pending for a decision more than thirty (30) days after filing, the burden is upon the moving party to inform the Court as to whether this status will interfere with other deadlines contained in this Scheduling Order.

All discovery matters and limitations shall be conducted in accordance with the Local Rules. The parties may, however, seek leave from this Court to exceed certain limitations if necessary.

19. Motion Practice / Dispositive Motions:

a. Motion Practice before the Court is controlled by LR Civ P 7.02. Review this rule for more specific detail of the Northern District's motion practice. Motions shall be concise and no longer than five (5) pages. Supporting memoranda of law shall be no longer than twenty-five (25) pages. As this Court intends to review all cases cited, counsel must ensure that the cases relied upon stand for the proposition, legal or factual, for which they are cited. The Court takes this requirement very seriously and will impose sanctions for willful violations.

b. All Dispositive Motions, as well as deposition transcripts, admissions, documents, affidavits, and any other such matters in support thereof, shall be filed no later than **August 19, 2016**.

Dispositive motions that are mature for decision may be made at any earlier time. Any such motion must be supported by a memorandum at the time the motion is filed with the Clerk. All Counsel are instructed that dispositive motions should be filed as soon as the matter is mature. The above date is a "no-later-than" date.

Filing deadlines for response and reply memoranda shall be in accordance with LR Civ P 7.02. All dispositive motions unsupported by memoranda will be denied without prejudice pursuant to LR Civ P 7.02.

Factual assertions made in memoranda should be supported by specific references to affidavits, depositions or other documents made a part of the record before the Court.

Copies of the supporting documents, or relevant portions thereof, should be appended to the memoranda.

20. Pretrial Disclosures Fed. R. Civ. P. 26(a)(3): If the parties do not settle the case, final pretrial disclosures, to include trial witness list, depositions and interrogatories for use at trial, and trial exhibit list as further defined by Fed. R. Civ. P. 26(a)(3) shall be filed and exchanged on or before **September 16, 2016**. A trial exhibit binder from each party will be exchanged and sent to the Judge's law clerk on the same date, with exhibits marked and tabbed in numerical sequence. Original exhibits shall be submitted to the Clerk at trial and should not be tendered to the Clerk prior to trial.

a. **Objections**: Objections to the above must be filed in writing and submitted by **September 30, 2016**, for consideration at the Final Pretrial Conference.

b. **Joint Pretrial Order**: The Pretrial Disclosures and objections **ARE NOT REQUIRED** to be set forth again in the Joint Pretrial Order.

21. Motions in Limine: All motions in limine must be accompanied by short statements (generally not more than a paragraph) of applicable memoranda of law and filed with the Clerk not later than **September 16, 2016**. All motions in limine must be numbered consecutively with a title listing the subject matter of the motion.

a. **Responses**: Responses to such motions, which also must be accompanied by a short statement of applicable law, shall be filed by counsel on or before **September 30, 2016**.

22. Proposed Findings of Fact/Conclusions of Law: October 14, 2016.

23. Joint Pretrial Order: A joint pretrial order (meaning that the parties combine

their presentations into one document) shall be submitted to the Court not later than **October 21, 2016**. The joint pretrial order **shall contain ONLY the matters set forth below, unless additional items are added by joint agreement of the parties, in the following order:**

1. **(A).** Brief statement by plaintiff(s) as to essential elements of claim, all damages sought (including an itemized list of special damages), and supporting legal authority or statutes.

(B). Brief statement by defendant(s) of essential elements of defense and supporting legal authorities.

2. **(A).** Plaintiff(s) listing of contested issues of fact and law, including pending motions, and citations of applicable law.

(B). Defendant(s) listing of contested issues of fact and law, including pending motions, and citations of applicable law.

3. Stipulation of Facts: Counsel are encouraged to meet and agree to stipulations of facts in this case.

4. Damages: A statement of all damages claimed, including an itemized list of special damages.

5. Suggestions for avoidance of unnecessary proof and cumulative evidence, and suggestions for any special procedures.

6. Statement of separately requested number of trial days by each party.

7. Last settlement demand by plaintiff(s) and last response by defendant(s).

Following the Pretrial Conference, this Court shall enter the Final Pretrial Order which shall

be modified only to prevent manifest injustice.

24. Final Pretrial Conference: The Final Pretrial Conference shall be held on **October 28, 2016 at 9:30 a.m. in the District Judge Courtroom at the United States Courthouse, Martinsburg, West Virginia.** The conference shall be attended by lead trial counsel for each represented party and all unrepresented parties. Counsel shall be prepared to participate fully and to discuss all aspects of the case as well as the matters set forth in the Joint Pretrial Order previously submitted.

At least one of the attorneys for each party and all unrepresented parties participating in the Pretrial Conference, or any conference before trial, shall have authority to make decisions as to settlement, stipulations and admissions on all matters that participants reasonably anticipate may be discussed. Counsel and parties are subject to sanctions for failure to comply with this requirement and for lack of preparation specified in LR Civ P 37.01 and Fed. R. Civ. P. 16(f) respecting pretrial conferences or orders.

25. Trial: A bench trial in this action shall be held on **November 8, 2016 at 9:00 a.m. in the District Judge Courtroom at the United States Courthouse, Martinsburg, West Virginia.**

26. Deadlines Final: The time limitations set forth above shall not be altered except as set forth in LR Civ P 16.01(f).


27. Finality of Scheduling Order: Unless authorized by the Court, the above dates and requirements of this Scheduling Conference Order are **FINAL**. Therefore, **NO** additional evidence developed as a result of deviations from the above will be admissible at trial, and no untimely motions will be considered.

28. Scheduling Conference: A telephonic Scheduling Conference was held on July 20, 2015 at 1:00 p.m.

All dates for submissions, deliveries, and filings with the Clerk of the District Court refer to the date the materials must be actually received and not the mailing date.

The Clerk is **DIRECTED** to transmit copies of this Order to all counsel of record herein.

DATED: July 21, 2015



GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE